that any award made in the nature of compensation for injury to the deceased's estate, should be deducted from any award made to the dependants, I assess the compensation, based on a dependency worth $100 p.m., at $13,000 on the basis of 100% liability. But as the deceased was equally to blame for his death, the award is accordingly reduced to $6,500 which I apportion as follows:—

Plaintiff, widow	...	$ 3,000
Teh Leong Chong, son	...	535
Teh Kim Inn, daughter	...	740
Teh Leong Hin, son	...	1,075
Teh Leong Tong, son	...	1,150.

The $3,000 is to be paid to the widow's solicitors; the children's shares are to be paid into court, pending further order or orders.

As regards costs, I decide after hearing argument that they are a matter within the discretion of the Court and in the circumstances of this case it is fair and just that the defendant should pay all the plaintiff's costs.

Order accordingly.

Solicitors: *Bannon & Bailey; George & Khoo.*

LIM CHENG v. SANDANAM

[A.C.J. (Hashim J.) April 3, 1962]

[Raub — Civil Appeal No. 1 of 1962]

Practice and Procedure — Failure to extract order of trial Magistrate — Technical flaw curable under R.S.C., O.59 r.4(1).

The failure to extract the order of the trial magistrate and the omission of the "decision" in the appeal record under O.XXXIX r.3(1)(d) of the Subordinate Courts Rules was a technical flaw which should be rectified by O.59 r.4(1) of the Rules of the Supreme Court.

PRELIMINARY OBJECTION.

Kam Woon Wah for the appellant.

Lall Singh for the respondent.

Cur. Adv. Vult.

Hashim J.: At the hearing of this appeal case Mr. Lall Singh for the respondent raised a preliminary objection, which, in my opinion, was a novel one. He contended that as the appeal record did not include "the decision" under Order XXXIX r.3(1)(d) of the Subordinate Courts Rules the appeal record was not complete and therefore the appeal should be dismissed. He further contended that the appeal should be dismissed on the second ground, namely that the appellant had failed to extract the decision given by the lower Court. Unfortunately, Mr. Lall Singh did not cite any authorities in support of both his contentions.

The procedure on appeal appears to be as follows:—

(a) The Notice of appeal shall be filed within 14 days from the day on which such decision was pronounced.

(b) The Court appealed from shall thereupon supply to the appellant, upon payment of the fee therefor, a certified copy of the judgment, or, in case no written judgment has been delivered, of the grounds of decision.

(c) The Court shall notify the appellant as soon as the certified copy is ready.

(d) The appellant shall within 14 days on receipt of the notification deposit in the Court a sum which in the opinion of the Registrar Sessions Court or the Magistrate, as the case may be, will cover the costs of preparing the appeal record and at the same time the appellant shall lodge in the Court $150.

(e) The Court *shall* then prepare the appeal record which *shall* contain copies of:

(i) the relevant pleadings,
(ii) the notes of evidence,
(iii) the grounds of judgment,
(iv) *the decision*,
(v) the notice of appeal,
(vi) all such documentary exhibits and other documents as the parties shall consider relevant for the purposes of appeal.

(f) As soon as the appeal record is ready the Court shall serve the appellant with a notice in Form 40.

It can be seen from (e) above that the appeal record shall contain "the decision". If "the decision" means the order of the trial Magistrate, it would appear that the order must be extracted before the Court can prepare the appeal record. The question for determination in this appeal is whether the failure to extract the order and the omission of the decision in the appeal record could mean that the appeal was not in order as it did not comply with the rules as laid down in Order XXXIX of the Subordinate Courts Rules and therefore the appeal should be dismissed. I think this is a matter of procedure and the appeal should not be dismissed for a technical flaw in the procedure. I think O.59 r.4(1) of the Rules of the Supreme Court should be applied in this case. The order of the trial Magistrate be extracted by the appellant and the appeal record be amended by including "the decision". Costs for the day to the respondent. The Assistant Registrar, Supreme Court, Raub shall fix a date for the hearing of this appeal case.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.; Lovelace & Hastings.*

TRANSPORT & STORAGE LTD. v. YEO SUE TUAN & 71 ORS.

[D.C.A. (Rose C.J.) May 17, 1962]

[Singapore — District Court Appeal No. 22 of 1961]

Master and Servant — Claim for holiday pay and pay in lieu of annual leave under ss.46 and 47 of the Labour Ordinance, 1955 — Employees daily paid employed on rotation — Whether casual labour or continuously employed.

The respondents claimed holiday pay and pay in lieu of annual leave from their employers, the appellants, under sections 46 and 47 of the Labour Ordinance, 1955. The defence was that the respondents were casual labourers with no element of continuity of service and

therefore not entitled to the payments claimed. At the inquiry before the Assistant Commissioner for Labour it was disclosed that the appellants made contributions to the Central Provident Fund in respect of the respondents. It was also shown that the employees did not work uninterruptedly on all working days but this was explained by the respondents by saying that as they worked on rotation it was normal that they should be away from work on some days. The Assistant Commissioner for Labour found for the respondents. On appeal to the High Court,

Held: on all the evidence before the Assistant Commissioner for Labour his decision could not be criticised and the appeal must therefore be dismissed.

Cases referred to:—

(1) *Hathaway* v. *The Argus Printing Co. Ltd.* [1901] 1 Q.B. 96.

(2) *Hill* v. *Begg* [1908] 2 K.B. 802.

(3) *Dewhurst* v. *Mather* [1908] 2 K.B. 954.

DISTRICT COURT APPEAL.

A. P. Godwin for the appellants.

T. T. Rajah for the respondents.

Cur. Adv. Vult.

Rose C.J.: This matter turns upon the question whether the respondents were continuously employed by the appellant company during the year 1960.

Seventy-two labourers are claiming benefits from their employment which would rightly be theirs if, as they contend, they should be regarded as something more than mere daily labourers.

The claim for holiday pay was made under section 46 of the Labour Ordinance, 1955 which states that: "Every workman shall be entitled to a paid holiday at his ordinary rate of wages on such of the days in Schedule A to this Ordinance as fall during the time that he is employed". The claim for pay in lieu of annual leave was made under section 47 of the said Ordinance which states that: "Every workman shall be entitled to seven days' paid leave for every twelve months' continuous service with the same employer" and that "the employer shall pay the workman his ordinary rate of wages for every day of such leave."

The principle behind the legislation is clear; but the application of the principle to any particular set of facts may present difficulties.

These matters are essentially ones of fact and I have to consider in the present case whether the Assistant Commissioner for Labour erred in principle in coming to the conclusion that he did.

Authorities are of little assistance and indeed I was referred to none except to three (*Hathaway* v. *The Argus Printing Co. Ltd.*[1], *Hill* v. *Begg*[2], and *Dewhurst* v. *Mather*[3]), relating to an analogous but not identical provision under the English Workmen's Compensation Act which indicate that complete continuity need not be required to satisfy the qualification of "regular employment" but that a certain element of continuity is sufficient. In the present case we are concerned not with the regularity but the continuity of the employment.

By an agreement between the parties, eight of the respondents were accepted as test examples.

Mr. Godwin, for the appellants, attaches weight to the consideration that reference to the pay cards of the respondents in question discloses that there were a number of days upon which the respondents did not attend for work and this lends colour to the suggestion that they were only casually employed. The contention of the respondents, on the other hand, is that they were required to work on rotation and that this necessarily involved occasional absences from work.

There is evidence, which the Assistant Commissioner for Labour accepted, that any one upon the company's list who wished to absent himself from work had to mention the matter to the *kepala* and obtain his permission for leave of absence.

Learned counsel for the appellants disputed this position; but upon a careful examination of the record I am unable to say that the Assistant Commissioner for Labour was wrong in drawing the inference that the respondents had established their proposition.

Moreover, it would seem that in the case of the majority of the eight test witnesses their days of absence were, for the most part, Sundays and public holidays.

Some of the seventy-two respondents had served the company for many years and in respect of all the company contributed to the Central Provident Fund, which, of course, is unnecessary in respect of casual labour.

As against this it is no doubt the case that the respondents were all paid on a daily basis and Mr. Godwin contends that in spite of the documents and the fact of the payment of the Central Provident Fund contributions the true position was that these respondents were daily paid employees only, who could come and go as they wished.

The Assistant Commissioner for Labour did not accept this view of the position and I am certainly unable to say that he was wrong. Apart from the question of leave of absence having to be applied for, there was evidence, amongst other matters, that a worker who absented himself for seven days, without obtaining the necessary leave of absence, had his name deleted from the company's list and was therefore no longer eligible to be selected for work on rotation. This matter in itself would seem to imply a recognition by the company of some relationship other than that of casual employment.

Taking the picture as a whole, I have come to the conclusion that the Assistant Commissioner for Labour cannot be criticised for forming the view that the respondents were continuously employed by — or in other words continuously served — the appellant company within the ambit of the relevant section and are therefore

entitled to the benefits that flow from that position.

I would mention in passing that at one stage I felt some difficulty about the case of one Koh Tion Meng, who appears to have worked for less than 200 days during the relevant period. He explained, however — and his explanation was accepted by the Assistant Commissioner for Labour — that he obtained permission for his numerous absences. Having regard to the picture as a whole I am not disposed to regard this particular instance as derogating from the validity of the respondents' case.

While it may well be that the appellant company now find themselves confronted with claims for benefits which they did not contemplate it seems to me that one must have regard to their conduct over the years and that of the respondents; and effect must be given to the resulting position, however financially disadvantageous to the company.

For these reasons the appeal must be dismissed and the order of the Assistant Commissioner for Labour affirmed.

The respondents will have the costs of this appeal, and of the proceedings before the Assistant Commissioner for Labour.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw*; *T. T. Rajah.*

CHONG CHIN NING v. REGINA

[A. Cr. J. (Rose C.J.) May 23, 1962]

[Singapore — Magistrate's Appeal No. 35 of 1962]

Shop Assistants Employment Ordinance, 1957, s.35(1) and (2) — Goods sold by shopkeeper on five-foot-way of shop on day shop required to be closed — Whether contravention of section 35(1) — Meaning of "premises".

A five-footway or a pavement outside a shop is not "premises" within the meaning of the Shop Assistants Employment Ordinance, 1957.

A shopkeeper need not exhibit Form A conspicuously in his shop as required by section 35(2) of the Shop Assistants Employment Ordinance on the day of the week he is required to entirely close his shop.

[Editorial Note: Premises of pharmacists, chemists or druggists are exempted by section 35 and Schedule A(a) of the Shop Assistants Employment Ordinance, 1957.

The appellant in this case was convicted on two charges, reading as follows:

" (1) That you, being the employer of Yan Siew Choon, No. 39 Seng Poh Road, Singapore, did fail to cause the said shop to remain entirely closed on Friday, 6th October, 1961, which day had been specified by you to be the closing day and thereby committed an offence under section 35(1) of the Shop Assistants Employment Ordinance, No. 13 of 1957, punishable under section 44 of the same Ordinance.

(2) Did fail to exhibit Form A permanently in a conspicuous place in the said shop as required under section 35(2) of the Shop Assistants Employment Ordinance, punishable under section 44 of the same Ordinance."]

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Rose C.J. (delivering oral judgment): This is an interesting and somewhat complicated case in which the appellant appears to be a joint partner in at least two concerns and possibly a third. He is a half-partner, apparently, in a Chinese medicine shop which consists of half of the premises in question and he is also a partner, one of two partners, in a dry goods business which occupies the other half of these premises. The evidence is that one lot of shelves carries the goods of the one business and another lot of shelves carries the goods of the other; and there is a common door entering into these two places.

There is no doubt, of course, that the medicine side is entitled to be kept open for seven days a week. That being so, it follows that the door, there being only one door, is entitled to be kept open for seven days a week.

The evidence in this case, it appears to be common ground is that as far as the sundry dry goods are concerned the goods were covered by some kind of covering cloth or tarpaulin or what have you. But what is suggested that happened in this case is that on the pavement outside no stalls were involved, no erection of any kind but on the pavement outside some goods of a different nature were being sold. Now there appeared to be some slight dispute between learned counsel as to whether that was the position or not but I think, as is pointed out at page 3 of the record, the matter is put into proper perspective when the Labour Officer says that the goods displayed outside were crockery, plastic wares and some other things and that the goods displayed inside were hair cream, thermos flasks, sundry goods and then when he is asked, "Would you agree that the nature of the goods sold inside is different from the goods sold outside on the pavement? and he answered, "Yes".

Now it appeared to be the custom for these goods outside to be sold on the six days when the shop was opened and also on part of the seventh day when the shop was closed and it is with regard to that matter that all this palaver is about.

It appeared that on the day in question this Labour Officer observed a woman or two women at different times make some small purchase outside and that, in due course after a few cents changed hands, the appellant and I think his partner and an employee carried these goods inside the shop.

Well now he is charged with regard to the first charge with failing to cause the shop to remain entirely closed. The medicine shop is irrelevant in this case. The shop is that portion of the premises which sold these sundry dry goods. The question is whether the goods that were sold on the pavement were of a different type to